

SENATE BILL No. 645

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3-3.

Synopsis: Disabled from trade compensation. Creates disabled from trade compensation. Provides that an employee who: (1) has an injury that results in a temporary total disability or a permanent partial impairment; (2) is capable of performing work with limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's injury; and (3) returns to work, may receive compensation for the difference in average weekly earnings lost. Limits disabled from trade compensation to 52 consecutive weeks or 78 aggregate weeks. Provides a cap of \$762 per week for disabled from trade compensation. Makes a conforming amendment.

Effective: July 1, 1999.

Blade, Young

January 22, 1999, read first time and referred to Committee on Pensions and Labor.



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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 645

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) Compensation shall be
- 3 allowed on account of injuries producing only temporary total disability
- 4 to work or temporary partial disability to work beginning with the
- 5 eighth (8th) day of such disability except for medical benefits provided
- 6 in section 4 of the chapter. Compensation shall be allowed for the first
- 7 seven (7) calendar days only if the disability continues for longer than
- 8 twenty-one (21) days.
- 9 (b) The first weekly installment of compensation for temporary
- 10 disability is due fourteen (14) days after the disability begins. Not later
- 11 than fifteen (15) days from the date that the first installment of
- 12 compensation is due, the employer or the employer's insurance carrier
- 13 shall tender to the employee or to the employee's dependents, with all
- 14 compensation due, a properly prepared compensation agreement in a
- 15 form prescribed by the board. Whenever an employer or the employer's
- 16 insurance carrier denies or is not able to determine liability to pay
- 17 compensation or benefits, the employer or the employer's insurance



1 carrier shall notify the worker's compensation board and the employee
 2 in writing on a form prescribed by the worker's compensation board not
 3 later than thirty (30) days after the employer's knowledge of the
 4 claimed injury. If a determination of liability cannot be made within
 5 thirty (30) days, the worker's compensation board may approve an
 6 additional thirty (30) days upon a written request of the employer or the
 7 employer's insurance carrier that sets forth the reasons that the
 8 determination could not be made within thirty (30) days and states the
 9 facts or circumstances that are necessary to determine liability within
 10 the additional thirty (30) days. More than thirty (30) days of additional
 11 time may be approved by the worker's compensation board upon the
 12 filing of a petition by the employer or the employer's insurance carrier
 13 that sets forth:

- 14 (1) the extraordinary circumstances that have precluded a
- 15 determination of liability within the initial sixty (60) days;
- 16 (2) the status of the investigation on the date the petition is filed;
- 17 (3) the facts or circumstances that are necessary to make a
- 18 determination; and
- 19 (4) a timetable for the completion of the remaining investigation.

20 An employer who fails to comply with this section is subject to a civil
 21 penalty of fifty dollars (\$50), to be assessed and collected by the board
 22 upon notice and hearing. Civil penalties collected under this section
 23 shall be deposited in the state general fund.

24 (c) Once begun, temporary total disability benefits may not be
 25 terminated by the employer unless:

- 26 (1) the employee has returned to any employment;
- 27 (2) the employee has died;
- 28 (3) the employee has refused to undergo a medical examination
- 29 under section 6 of this chapter or has refused to accept suitable
- 30 employment under section 11 of this chapter;
- 31 (4) the employee has received five hundred (500) weeks of
- 32 temporary total disability benefits or has been paid the maximum
- 33 compensation allowed under section 22 of this chapter; ~~or~~
- 34 (5) the employee is unable or unavailable to work for reasons
- 35 unrelated to the compensable injury; **or**
- 36 **(6) the employee returns to work with limitations or**
- 37 **restrictions and the employer converts temporary total**
- 38 **disability benefits into disabled from trade compensation**
- 39 **under section 33 of this chapter.**

40 In all other cases the employer must notify the employee in writing of
 41 the employer's intent to terminate the payment of temporary total
 42 disability benefits and of the availability of employment, if any, on a

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form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means, and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under IC 22-3-4-5.

(d) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(e) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under section 10 of this chapter and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

SECTION 2. IC 22-3-3-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 33. (a) If an employee:**

- (1) receives an injury that results in a temporary total disability or a permanent partial impairment;**
- (2) is capable of performing work with limitations or restrictions that prevent the employee from returning to the**



position the employee held before the employee's injury; and
 (3) returns to work;

the employee may receive disabled from trade compensation.

(b) An employee may receive disabled from trade compensation for a period not to exceed:

(1) fifty-two (52) consecutive weeks; or

(2) seventy-eight (78) aggregate weeks.

(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to STEP FOUR of the following formula:

STEP ONE: Determine the employee's average weekly earnings from employment with limitations or restrictions that are entered after the employee's injury.

STEP TWO: Determine the employee's average weekly earnings from employment before the employee's injury.

STEP THREE: Determine the greater of:

(A) the STEP TWO result minus the STEP ONE result; or

(B) zero (0).

STEP FOUR: Determine the lesser of:

(A) the STEP THREE result; or

(B) seven hundred sixty-two dollars (\$762).

(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

(1) an explanation of the limitations or restrictions placed on the employee;

(2) the amount of disabled from trade compensation the employee has been awarded; and

(3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of benefits for a temporary total disability or a permanent partial impairment into disabled from trade compensation by filing a copy of the notice required under subsection (d) with the board.

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